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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,422	03/01/2004	Scott G. Manke	040014-0192	6921
26371	7590	07/01/2005	EXAMINER	
FOLEY & LARDNER 777 EAST WISCONSIN AVENUE SUITE 3800 MILWAUKEE, WI 53202-5308			SMITH, RICHARD A	
			ART UNIT	PAPER NUMBER
			2859	

DATE MAILED: 07/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/790,422

Applicant(s)

MANKE, SCOTT G.

Examiner

R. Alexander Smith

Art Unit

2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____.  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>20040601</u> .  | 6) <input type="checkbox"/> Other: ____.                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 2,426,927 to Ganson.

See the arrows of figure 1, column 1, lines 30-56 and column 2, lines 20-25.

3. Claims 1 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 3,216,600 to Dreps.

See indicators 22-24 of figure 1 and associated text.

4. Claims 1 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 4,335,074 to Bernas.

See indicators 62 and 63 of figure 1a and associated text. Furthermore, Bernas discloses that the indicators are incised into the cap and container (column 4, lines 47-51).

*Claim Rejections - 35 USC § 103*

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2-6, 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dreps in view of U.S. 5,356,012 to Tang et al.

Dreps teaches all that is claimed as discussed in the above rejections of claims 1 and 7 except for the limitations of claims 2-6, 8 and 9.

With respect to claims 2-4 and 8: Tang et al. discloses a container having indicators that can be molded onto or printed thereon or in the form of a sticker, i.e., label. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the container and cap, taught by Dreps, to include molded visual indicators and molded, decaled, stickered, labeled or printed range indicators, as taught by Tang et al., since Tang et al. discloses that these may be used in the alternative and since molded would allow for cheaper construction and indicia that will resist abrasion and wear, and since printed or decaled or stickered would allow easier adjustment to accommodate variations to the sealing between the container and cap; or to allow retrofitting to existing containers.

With respect to claims 5, 6 and 9, i.e., the range indicator is elongated with a first end and a second end and wherein the second end or the method of one end is narrower: Dreps discloses

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that his arrows are representative and that any design may be applied to the cap and container that provides a visual indication of alignment (column 2, lines 20-25). Therefore the limitations as claimed are considered to be nothing more than the use of one of numerous and well known alternate types of visual indication means that a person having ordinary skill in the art would have been able to provide using routine experimentation in order to provide a visual indication of the proper sealing as already suggested by Dreps.

7. Claims 2-6, 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ganson in view of U.S. 5,356,012 to Tang et al.

Ganson teaches all that is claimed as discussed in the above rejections of claims 1 and 7 except for the limitations of claims 2-6, 8 and 9.

With respect to claims 2-4 and 8: Tang et al. discloses a container having indicators that can be molded onto or printed thereon or in the form of a sticker, i.e., label. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the container and cap, taught by Ganson, to include molded visual indicators and molded, decaled, stickered, labeled or printed range indicators, as taught by Tang et al., since Tang et al. discloses that these may be used in the alternative and since molded would allow for cheaper construction and indicia that will resist abrasion and wear, and since printed or decaled or stickered would allow easier adjustment to accommodate variations to the sealing between the container and cap; or to allow retrofitting to existing containers.

With respect to claims 5, 6 and 9, i.e., the range indicator is elongated with a first end and a second end, and wherein the second end or the method of one end is narrower: These

limitations, as claimed by Applicant, are considered to be equivalent to the range indicator, as disclosed by Ganson, since: 1) neither non-obvious nor unexpected results, i.e., results which are different in kind and not in degree from the results of the prior art, will be obtained if one is used instead of the other, as long as the user can gauge the degree of sealing, as already taught by Ganson, 2) the elongated range indicator with a narrower end claimed by Applicant and the range indicator used by Ganson are well known alternate types of indicators that will perform the same function, if one is replaced with the other, of providing a visual range to gauge the degree of sealing, and 3) the use of the elongated range indicator is considered to be nothing more than the use of one of numerous and well known alternate types of indicators that a person having ordinary skill in the art would have been able to provide using routine experimentation in order to indicate the degree of sealing, as already taught by Ganson.

### *Conclusion*

8. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure. The prior art cited in PTO-892 and not mentioned above disclose related indicators and methods or components thereof.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to R. Alexander Smith whose telephone number is 571-272-2251. The examiner can normally be reached on Monday through Friday from 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F. Gutierrez can be reached on 571-272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'R. Alexander Smith', with a long horizontal stroke extending to the right.

R. Alexander Smith  
Primary Examiner  
Technology Center 2800

RAS  
June 27, 2005